

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

RYAN McCREARY,

Plaintiff

Case No. 2:20-cv-01236-APG-BNW

CORE CIVIC, *et al.*,

Defendants

ORDER

V.

Defendants

12 On August 24, 2020, the court received notice that McCreary's mail at ECF No. 13 was
13 undeliverable as McCreary had been transferred or released from the Nevada Southern Detention
14 Center. ECF No. 15. On September 8, 2020, McCreary filed a notice of change of address
15 stating he was at FCI Herlong. That same day, the court remailed ECF No. 13 to McCreary's
16 address at FCI Herlong. The October 2, 2020 deadline is long-since expired, and McCreary has
17 not filed an application to proceed *in forma pauperis*, paid the full \$400 filing fee, or otherwise
18 responded to Judge Weksler's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See Ghazali v. Moran*, 46 F.3d 52, 53-

1 54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
2 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order
3 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
4 (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court
5 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
6 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424
7 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with local
8 rules).

9 In determining whether to dismiss an action for failure to obey a court order, the court
10 must consider several factors: (1) the public's interest in expeditious resolution of litigation;
11 (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the
12 public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
13 alternatives. *See Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d
14 at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

15 Here, the first two factors (the public's interest in expeditiously resolving this litigation
16 and the court's interest in managing the docket) weigh in favor of dismissal. The third factor
17 (risk of prejudice to the defendants) also weighs in favor of dismissal because a presumption of
18 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
19 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
20 fourth factor (public policy favoring disposition of cases on their merits) is greatly outweighed
21 by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party that his
22 failure to obey the court's order will result in dismissal satisfies the "consideration of
23

1 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*,
2 779 F.2d at 1424. Judge Weksler's order expressly stated:

3 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
4 application to proceed *in forma pauperis* with all three documents or,
5 alternatively, the first three pages of the application to proceed *in forma pauperis*
6 and an affidavit detailing the efforts he took to acquire both a financial certificate
7 and an inmate account statement from prison officials, or pay the full \$400 filing
fee for a civil action on or before October 2, 2020, the court will dismiss this
action without prejudice for Plaintiff to refile the case with the court, under a new
case number, when Plaintiff has all three documents needed to file a complete
application to proceed *in forma pauperis*.

8 ECF No. 13 at 4. Thus, McCreary had adequate warning that dismissal would result from his
9 noncompliance with Judge Weksler's order.

10 I THEREFORE ORDER that this action is dismissed without prejudice based on plaintiff
11 Ryan McCreary's failure to file an application to proceed *in forma pauperis* or pay the full \$400
12 filing fee in compliance with this court's order.

13 I FURTHER ORDER the Clerk of Court to close the case and enter judgment
14 accordingly.

15 DATED: November 24, 2020.

16 
17 ANDREW P. GORDON
18 UNITED STATES DISTRICT JUDGE